Filed 12/31/12 D.Q. v. Superior Court CA6

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

D.Q.,

Petitioner,

v.

THE SUPERIOR COURT OF SAN BENITO COUNTY,

Respondent,

SAN BENITO HEALTH AND HUMAN SERVICES AGENCY,

Real Party in Interest.

H038906
(San Benito County
Super. Ct. No. JV1100022)

I. INTRODUCTION

D.Q., the father of J., the child at issue in this juvenile dependency case, has filed a petition for extraordinary writ seeking review of the juvenile court's September 24, 2012 order setting a Welfare & Institutions Code section 366.26[1] permanency planning hearing. The father, a self-represented litigant, requests that the order setting the section 366.26 be vacated and that he be provided with reunification services, visitation, and return or custody of J.

[1] All statutory references hereafter are to the Welfare & Institutions Code.

For the reasons stated below, we find that D.Q. does not have standing to seek review of the September 24, 2012 order, which terminated reunification services to J.'s mother. We also find that since D.Q. failed to appeal the March 26, 2012 dispositional order denying him placement, reunification services and visitation, that order is final and we lack jurisdiction to review those rulings. We will therefore dismiss the writ petition.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. *Detention*

J., her sister, and her two brothers have the same mother and different fathers. J. is the only child at issue in this writ proceeding. All four children were taken into protective custody after the mother's husband physically abused one of J.'s brothers. In June 2011 the San Benito County Health and Human Services Agency (Agency) filed a petition under section 300 alleging that the children came within the jurisdiction of the juvenile court.

At the jurisdiction hearing held in August 2011, the juvenile court found that J. came within section 300 and detention was necessary under section 300, subdivision (b) [failure to protect], (g) [no provision for support], and (j) [abuse of a sibling]. J. was declared a dependent of the court in August 2011, when the court also found that D.Q. was J.'s presumed father and ordered reunification services be provided to the mother. At that time, D.Q. was incarcerated in a distant state.

On February 2, 2012, the Agency filed a section 342[2] subsequent petition alleging new facts or circumstances constituting an additional ground to adjudge J. and her

[2] Section 342 provides: "In any case in which a minor has been found to be a person described by Section 300 and the petitioner alleges new facts or circumstances, other than those under which the original petition was sustained, sufficient to state that the minor is a person described in Section 300, the petitioner shall file a subsequent petition. This section does not apply if the jurisdiction of the juvenile court has been terminated prior to the new allegations. [¶] All procedures and hearings required for an original petition are applicable to a subsequent petition filed under this section."

siblings dependents of the court. The new facts or circumstances included the allegation that J. and her sister had been sexually abused by their stepbrother. In the February 6, 2012 status review report, the Agency noted that D.Q. had received notice of the upcoming six-month review hearing and had not requested that J. be returned to him.

B. *Six-Month Review Hearing*

An uncontested six-month review hearing was held on February 6, 2012. The same day, the juvenile court issued its findings and orders following the six-month review hearing. The court ordered that J. and her siblings continue as dependents of the court; that reunification services be continued to the mother; and that no reunification services be provided to D.Q. unless he requested services and was legally entitled to services.

C. *Jurisdiction/Disposition*

In its March 2, 2012 jurisdiction report on the section 342 subsequent petition, the Agency stated that D.Q. remained incarcerated in a distant state where he was being held pending federal criminal charges. The Agency recommended that all prior orders remain in effect and that a disposition hearing be set. After the uncontested jurisdiction hearing was held, the juvenile court issued its March 5, 2012 findings and orders, which adopted the Agency's recommendation that all prior orders remain in effect (including the order denying reunification services to D.Q.) and set the disposition hearing for March 26, 2012.

The Agency filed a disposition report on March 23, 2012. Regarding J. and D.Q., the report stated that D.Q. had informed the Agency that "he took a plea of ten years to life in a federal drug case." Additionally, the Agency noted that D.Q. had "stated, on multiple occasions, that he wants to re-initiate contact with [J.] and wants [J.] to have contact with paternal relatives. He does not, however, request, that [J.] be placed in his care." The Agency also reported that D.Q. had "been in regular communication with [the Agency]. In letters to and discussions with [the Agency], [D.Q.] has expressed concern

for [J.] and has not hidden his criminal history." D.Q. also told the Agency that he wanted to facilitate contact between J. and her paternal relatives. D.Q.'s letter to J. re-introducing himself had been given to J.'s therapist to be "handled in a therapeutic manner." The Agency noted that J. had no memory of D.Q. and did not have a relationship with him. Due to D.Q.'s incarceration, the Agency stated that placement of J. with D.Q. and visitation between D.Q. and J. were not options.

In the March 26, 2012 dispositional order, the juvenile court found by clear and convincing evidence that D.Q. was incarcerated or institutionalized; he could not care for J.; and visitation would be detrimental to her. The court declared J. a dependent of the court and ordered that reunification services not be provided to D.Q. The court also denied visitation between D.Q. and J. until further court order.

D. *Twelve-Month Review Hearing*

The Agency filed a 12-month status review report on August 20, 2012. Regarding D.Q., the Agency noted that he was currently incarcerated in federal prison in a distant state. D.Q. had monthly contacts with the Agency and had sent letters to J., who was placed in a foster home. The Agency recommended that reunification services to the mother be terminated because there was not a reasonable probability that the children could be safely returned to the physical custody of the mother and her husband. The Agency also recommended that a section 366.26 permanency planning hearing be set.

According to the September 24, 2012 minute order, a contested 12-month review hearing was held on that date. The juvenile court adopted the Agency's recommendation that the mother's reunification services be terminated and set a section 366.26 hearing for January 14, 2013.

E. *The Writ Petition*

D.Q. filed a petition for extraordinary writ pursuant to California Rules of Court, rule 8.452 on November 19, 2012. In his petition, D.Q. challenges the juvenile court's September 24, 2012 order, which he asserts is erroneous because he has "been trying to

locate [his] daughter since 2004. [He] was not aware of her mother's marriage and was not aware of the abuse she suffered and was not notified. [He] would like to build a relationship with [his] daughter."

D.Q. requests that the juvenile court be directed to (1) vacate the order setting the section 366.26 hearing on January 14, 2013; (2) order that reunification services be provided; (3) order visitation between D.Q. and J.; and (4) return or grant custody of J. to D.Q. He also requests a stay of the January 14, 2013 hearing, "[t]o allow my family time and opportunity to bond with [J.] and make the necessary arrangements to provide the level of care and communication to be successful."

The Agency did not file a response to the writ petition.

III. DISCUSSION

A. *Standing*

As a threshold matter, we consider whether D.Q. has standing to challenge the September 24, 2012 order terminating reunification services to J.'s mother and setting the section 366.26 permanency planning hearing.

" 'Generally, parents can appeal judgments or orders in juvenile dependency matters. [Citation.] However, a parent must also establish she [or he] is a "party aggrieved" to obtain a review of a ruling on the merits. [Citation.] Therefore, a parent cannot raise issues on appeal from a dependency matter that do not affect her [or his] own rights.' [Citation.] 'To be aggrieved, a party must have a legally cognizable immediate and substantial interest which is injuriously affected by the court's decision. A nominal interest or remote consequence of the ruling does not satisfy' the standing requirement. [Citation.] An appellant cannot urge errors that affect only another party who does not appeal. [Citation.]" (*In re S.A.* (2010) 182 Cal.App.4th 1128, 1134; see also *In re Jenelle C.* (1987) 197 Cal.App.3d 813, 818 [parent does not have standing to assert error on behalf of the other parent].)

We determine that the September 24, 2012 order did not affect D.Q.'s rights, since the juvenile court had previously denied him placement, reunification services, and visitation in the dispositional order of March 26, 2012. As discussed below, D.Q. did not appeal the March 26, 2012 order, which is now final. The September 24, 2012 order terminated reunification services to J.'s mother, and she has not sought review. Since D.Q. is not aggrieved by the September 24, 2012 order, he does not have standing to challenge the order in the appellate court.

" 'A "lack of standing" is a jurisdictional defect.' [Citation.] When an appellant lacks standing, the appeal is subject to dismissal. [Citation.]" (*In re D.M.* (2012) 205 Cal.App.4th 283, 294.) We may therefore dismiss D.Q.'s petition for extraordinary relief on the ground that he lacks standing to challenge the September 24, 2012 order.

B. *Appealability*

We understand D.Q. to seek review of the juvenile court's rulings denying him placement, reunification services, and visitation, which the court made in its March 26, 2012 dispositional order. As we will explain, we lack jurisdiction to consider D.Q.'s challenge to the March 26, 2012 order since the order is no longer appealable.

" 'Dependency appeals are governed by section 395, which provides in relevant part: "A judgment in a [dependency] proceeding . . . may be appealed from in the same manner as any final judgment, and any subsequent order may be appealed from as from an order after judgment . . . ." ' " (*Joe B. v. Superior Court* (2002) 99 Cal.App.4th 23, 26.) " 'Therefore, all subsequent orders are directly appealable without limitation, except for post-1994 orders setting a [section 366.26] hearing when the circumstances specified in section 366.26, subdivision (*l*), exist. [Citations.]' " (*Ibid*.)

An order denying reunification services that is unaccompanied by a simultaneous order setting a section 366.26 hearing is immediately appealable. (*Wanda B. v. Superior Court* (1996) 41 Cal.App.4th 1391, 1394 (*Wanda B.).*) Thus, where a mother did not timely appeal the order denying her reunification services, the appellate court lacked

jurisdiction to consider a writ petition, filed one year later, in which she challenged the order. (*Ibid*.) The appellate court therefore dismissed the writ petition. (*Id*. at p. 1396.)

A dispositional order in a dependency proceeding is also an appealable order. (*In re Meranda P*. (1997) 56 Cal.App.4th 1143, 1150.) "A consequence of section 395 is that an unappealed disposition . . . order is final and binding and may not be attacked on an appeal from a later appealable order." (*Ibid*.; see also *John F. v. Superior Court* (1996) 43 Cal.App.4th 400, 405 [writ petition may not challenge dispositional order that petitioners failed to appeal].)

Here, the March 26, 2012 dispositional order included the juvenile court's rulings denying D.Q. placement, reunification services, and visitation. The order was not accompanied by a simultaneous order setting the section 366.26 hearing and was therefore immediately appealable. (*Wanda B., supra,* 41 Cal.App.4th at p. 1395.) Since D.Q. did not timely appeal from the March 26, 2012 dispositional order, the order is now final. (See Cal. Rules of Court, rule 8.104(a).)[3] As in *Wanda B.*, we are "accordingly without jurisdiction to consider [his] current challenge by means of [his] writ petition." (*Wanda B., supra,* at p. 1396.)

Since we lack jurisdiction to consider D.Q.'s challenge to the juvenile court's rulings in the March 26, 2012 dispositional order, and he lacks standing to challenge the

[3] California Rules of Court, rule 8.104(a) provides: "(1) Unless a statute or rule 8.108 provides otherwise, a notice of appeal must be filed on or before the earliest of: [¶] (A) 60 days after the superior court clerk serves on the party filing the notice of appeal a document entitled 'Notice of Entry' of judgment or a file-stamped copy of the judgment, showing the date either was served; [¶] (B) 60 days after the party filing the notice of appeal serves or is served by a party with a document entitled 'Notice of Entry' of judgment or a file-stamped copy of the judgment, accompanied by proof of service; or [¶] (C) 180 days after entry of judgment." "Appellate jurisdiction to review an appealable order depends upon a timely notice of appeal. [Citation.]" (*Wanda B., supra,* 41 Cal.App.4th at p. 1396.)

September 24, 2012 order setting the section 366.26 hearing, we will dismiss the writ petition.

IV. DISPOSITION

The petition for extraordinary relief is dismissed. This opinion is made final immediately on filing as to this court. (Cal. Rules of Court, rule 8.490(b)(3).)

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BAMATTRE-MANOUKIAN, J.

WE CONCUR:

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ELIA, ACTING P.J.

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MÁRQUEZ, J.